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101 Second Street; Suite 1800  
4 San Francisco, CA 94105  
Telephone: (415) 371-1200  
5 Facsimile: (415) 371-1211

6 Attorneys for Defendants  
WHITE CAP CONSTRUCTION SUPPLY, INC.  
7 And HD SUPPLY INC.

8  
9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA

11  
12 ALEX ROJAS,

13 Plaintiff,

14 v.

15 WHITE CAP CONSTRUCTION SUPPLY,  
16 INC. and HD SUPPLY INC.

17 Defendants.  
18

Case No.:

08

3886

NOTICE OF REMOVAL OF ACTION  
UNDER 28 U.S.C. §§ 1332 and 1441(b)  
(DIVERSITY)

Complaint Filed: July 7, 2008  
Trial Date: None

19 TO THE CLERK OF THE ABOVE ENTITLED COURT:

20 PLEASE TAKE NOTICE that Defendants White Cap Construction Supply, Inc. ("White  
21 Cap") and HD Supply Inc. ("HD Supply") (jointly "Defendants") hereby remove to this Court the  
22 state court action described below.

23 I. On or about July 7, 2008, an action was commenced in the Superior Court of the  
24 State of California for the County of San Francisco entitled *Alex Rojas, Plaintiff v. White Cap*  
25 *Construction Supply, Inc. and HD Supply Inc., et al., Defendants*, and assigned Case No. CGC-  
26 08-477141 ("State Court action"). Copies of the Summons to each defendant, the Civil Cover  
27 Sheet, the Complaint and the Notice to Plaintiff of Case Management Conference are attached  
28 hereto as Exhibit A. This represents all process, pleadings and orders served upon Defendants.

1 Attached hereto as Exhibit B is a true and correct copy of the Answer Defendants filed in the  
2 Superior Court.

3 2. Defendants have not filed, served or received any papers or pleadings in the State  
4 Court Action other than those attached to this Notice as Exhibits A and B.

5 3. This lawsuit first became removable on July 15, 2008, pursuant to 28 U.S.C.  
6 §1446(b). The lawsuit was first served upon and received by Defendants on that date.

7 4. At the time of the filing of the State Court action and at the time of removal,  
8 Defendant White Cap Construction Supply, Inc. ("White Cap") was and is a Delaware  
9 Corporation with its principal place of business in the State of Georgia. HD Supply Inc. was and  
10 is a Delaware corporation with its principal place of business in the State of Georgia. Neither  
11 defendant was nor is a citizen of the State of California.

12 5. White Cap does not employ any individuals in the State of California and derives  
13 virtually no revenue from the State of California. Its corporate headquarters are in Atlanta,  
14 Georgia. Hence, White Cap's principal place of business is the state of Georgia – and not the  
15 State of California.

16 6. HD Supply is a corporation that does business in all 50 states. Less than 15% of its  
17 revenue (including that of HD Supply and its subsidiaries) was generated in California during the  
18 first half of 2007.<sup>1</sup> Fewer than 25 percent of HD Supply's active, full-time employees work in the  
19 State of California. The great majority (88%) of HD Supply's locations or facilities (*i.e.*, tangible  
20 property) are located outside the State of California. There is no single state where a majority of  
21 HD Supply's business activities take place. Those business activities are instead spread among all  
22 50 states. The great majority of HD Supply's activities take place outside the State of California.  
23 The corporate headquarters for HD Supply, where much of the overall corporate strategy is  
24 developed, is in the State of Georgia. Hence, HD Supply's principal place of business is the state  
25 of Georgia – and not the State of California.

26  
27  
28 <sup>1</sup> Revenue data for the second-half of 2007 is not presently available to HD Supply.

1           7.     Plaintiff Alex Rojas is, and at all material times was, a citizen of the State of  
2 California.

3           8.     Plaintiff's claims for violation of the Fair Employment & Housing Act ("FEHA")  
4 reveal that the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs.  
5 If Plaintiff prevails at trial, it is most likely that his damages will exceed the jurisdictional limit  
6 identified in 28 U.S.C. § 1332(a), exclusive of interest and costs. At the time of his termination of  
7 employment in 2007, Plaintiff was paid a salary of more than \$52,000 per year. He claims  
8 damages for wrongful termination, for humiliation, mental anguish and emotional and physical  
9 distress, and punitive damages.

10          9.     In accordance with 28 U.S.C. § 1446(d), plaintiff, through his counsel of record,  
11 and the Clerk of the Superior Court, shall be timely served with copies of this Notice of Removal.

12           WHEREFORE, Defendants White Cap Construction Supply, Inc. and HD Supply Inc. pray  
13 that this action stand and remain removed from the Superior Court of the State of California for  
14 the County of San Francisco to this Court.

15  
16 Dated: August 14, 2008

THELEN REID BROWN RAYSMAN & STEINER LLP

17  
18 By: \_\_\_\_\_

*Robert A. Dolinko*  
Robert A. Dolinko  
Deborah R. Schwartz  
Attorneys for Defendants  
WHITE CAP CONSTRUCTION SUPPLY, INC.  
and HD SUPPLY INC.

1 *Rojas v. White Cap Construction and HD Supply, et al.*  
2 *Case No.*

3 **PROOF OF SERVICE BY MAIL**

4 I am over the age of 18 and not a party to the within action. I am employed in the County  
5 of San Francisco, State of California by Thelen Reid Brown Raysman & Steiner LLP. My  
6 business address is 101 Second Street, Suite 1800, San Francisco, California 94105.

7 On August 14, 2008, I served the following entitled document:

8 **NOTICE OF REMOVAL OF ACTION UNDER**  
9 **28 U.S.C. §§ 1332 and 1441(b) (DIVERSITY)**

10 by placing a true and correct copy thereof in a sealed envelope addressed as follows:

11  
12 Michael Hoffmann, Esq  
13 Hoffmann Employment Lawyers, LLP  
14 100 Pine Street, Suite 1550  
San Francisco, CA 94111

15 I am readily familiar with the firm's business practice for collection and processing of  
16 correspondence for mailing with the United States Postal Service. On this day, I placed for  
17 collection and processing the above documents to be deposited with the United States Postal  
18 Service in the ordinary course of business. And in the ordinary course of the firm's business, such  
19 correspondence is deposited with the United States Postal Service the same day that it is collected.

20 I declare under penalty of perjury under the laws of the State of California that the  
21 foregoing is true and correct.

22 Executed on August 14, 2008, at San Francisco, California.

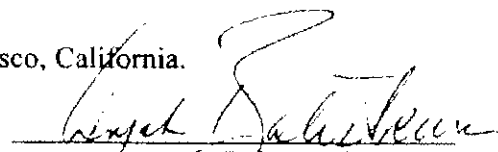
23   
24 Angela Balestrieri  
25  
26  
27  
28

Exhibit A

**SUMMONS**  
(CITACION JUDICIAL)

SUM-100

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:**  
(AVISO AL DEMANDADO):

**WHITE CAP CONSTRUCTION SUPPLY, INC., HD SUPPLY INC.,  
and DOES 1-50, inclusive**

**YOU ARE BEING SUED BY PLAINTIFF:**  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):  
**ALEX ROJAS**

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.courtinfo.ca.gov/selfhelp/espanol](http://www.courtinfo.ca.gov/selfhelp/espanol)), en la biblioteca de leyes de su condado o en la corte que le queda más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.courtinfo.ca.gov/selfhelp/espanol](http://www.courtinfo.ca.gov/selfhelp/espanol)) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:  
(El nombre y dirección de la corte es):

Civic Center Courthouse  
400 McAllister Street  
San Francisco, CA 94102

CASE NUMBER:  
(Número del Caso):

CGC-07-461-973

**680-38-477141**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
**MICHAEL HOFFMAN SBN 154481**  
**100 Pine Street, Suite 1550, San Francisco, CA Gordon Park-Li**

DATE: **JUL -7 2008**  
(Fecha)

Clerk, by \_\_\_\_\_  
(Secretario)

*Elias Dutil* Deputy  
**ELIAS DUTIL** (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

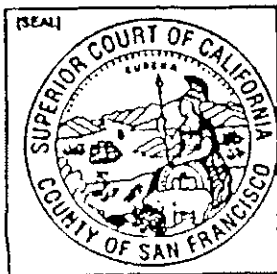
**NOTICE TO THE PERSON SERVED: You are served**

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☒ on behalf of (specify): **HD SUPPLY INC.**

- under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)  
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)  
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)  
☐ other (specify):

4. ☐ by personal delivery on (date):



**SUMMONS  
(CITACION JUDICIAL)**

SUM-100

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:  
(AVISO AL DEMANDADO):**

**WHITE CAP CONSTRUCTION SUPPLY, INC., HD SUPPLY INC.,  
and DOES 1-50, inclusive**

**YOU ARE BEING SUED BY PLAINTIFF:  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):  
ALEX ROJAS**

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

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The name and address of the court is:  
(El nombre y dirección de la corte es):

Civic Center Courthouse  
400 McAllister Street  
San Francisco, CA 94102

CASE NUMBER:  
Número del Caso

CCC-07-461-973

080-28-477141

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
MICHAEL HOFFMAN SBN 154481

100 Pine Street, Suite 1550, San Francisco, CA @ Gordon Park-Li

DATE: JUL -7 2008  
(Fecha)

Clerk, by \_\_\_\_\_  
(Secretario)

*Elías Durr* Deputy  
ELIAS DURR (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



**NOTICE TO THE PERSON SERVED: You are served**

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☒ on behalf of (specify): **WHITE CAP CONSTRUCTION SUPPLY, INC.**

- under: ☒ CCP 418.10 (corporation) ☐ CCP 418.60 (minor)  
☐ CCP 418.20 (defunct corporation) ☐ CCP 418.70 (conservatee)  
☐ CCP 418.40 (association or partnership) ☐ CCP 418.90 (authorized person)  
☐ other (specify):

4. ☐ by personal delivery on (date):

Page 1 of 1



ATTORNEY OR PARTY WITHOUT ATTORNEY (Please Print Name, Case Bar number, and address): <b>MICHAEL HOFFMAN SBN 154481</b> <b>BARBARA FIGARI SBN 251942</b> 100 Pine Street, Ste. 1550 San Francisco, CA 94111 TELEPHONE NO.: (415) 362-1111 FAX NO.: (415) 362-1112 ATTORNEY FOR: <b>ALEX ROJAS</b>		CM-010  <b>FILED</b> San Francisco County Superior Court  JUL - 7 2008  GORDON PARK-LI, Clerk BY: <i>Chris Park</i> Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF <b>SAN FRANCISCO</b> STREET ADDRESS: <b>400 McAllister Street</b> MAILING ADDRESS: CITY AND ZIP CODE: <b>San Francisco, CA 94102</b> BRANCH NAME: <b>Civic Center Courthouse</b>		CASE NUMBER: <b>88C-07-461-975</b>  JUDGE <b>88C-38-477141</b>
CASE NAME: <b>Rojas v. White Cap</b>		
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> <b>Unlimited (Amount demanded exceeds \$25,000)</b>	<input type="checkbox"/> <b>Limited (Amount demanded is \$25,000 or less)</b>	<b>Complex Case Designation</b> <input type="checkbox"/> <b>Counter</b> <input type="checkbox"/> <b>Joinder</b> Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

Items 1-8 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <b>Other PUPD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PUPD/WD (23) <b>Non-PUPD/WD (Other) Tort</b> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PUPD/WD tort (35) <b>Employment</b> <input checked="" type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <b>Real Property</b> <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (38)	<b>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</b> <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxics tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20) <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- |                                                                                                                                |                                                                                                                                                            |
|--------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------|
| a. <input type="checkbox"/> Large number of separately represented parties                                                     | d. <input type="checkbox"/> Large number of witnesses                                                                                                      |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence                                                         | f. <input type="checkbox"/> Substantial postjudgment judicial supervision                                                                                  |
3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary, declaratory or injunctive relief c. ☒ punitive
4. Number of causes of action (specify):
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: June 27, 2008

R. Michael Hoffman, Esq.

(TYPE OR PRINT NAME)

## NOTICE

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

## CIVIL CASE COVER SHEET



SUMMONS ISSUED

**FILED**  
San Francisco County Superior Court

JUL - 7 2008

GORDON PARK-LI, Clerk

by: [Signature] Deputy Clerk

HOFFMAN EMPLOYMENT LAWYERS, LLP  
MICHAEL HOFFMAN 154481  
100 Pine Street Ste. 1550  
San Francisco, CA 94111  
Tel (415) 362-1111 CASE MANAGEMENT CONFERENCE SET  
Fax (415) 362-1112  
Email: mhoffman@employment-lawyers.com

DEC - 5 2008 - 9:00 AM

Attorney for Plaintiff

**DEPARTMENT 212**

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO - UNLIMITED JURISDICTION

ALEX ROJAS,

Plaintiff,

vs.

CASE NO. **08-38-477141**

PLAINTIFF'S COMPLAINT FOR  
DAMAGES

JURY TRIAL DEMAND

WHITE CAP CONSTRUCTION SUPPLY,  
INC., HD SUPPLY INC., and DOES 1-50,  
inclusive,

Defendants.

1. Plaintiff, ALEX ROJAS an individual ("Plaintiff") is, and at all times relevant hereto has been a resident of the State of California, County of San Francisco. Plaintiff was employed for a period of approximately twenty-two (22) years, from October 3, 1985 until December 10, 2007 by Viking Distributing, which was bought out by Defendant WHITE CAP CONSTRUCTION SUPPLY, INC. ("White Cap"), and was finally bought out by Defendant HD SUPPLY, a Home Depot company.

2. Plaintiff is informed and believes and thereby alleges that defendant White Cap is a Delaware Corporation, and that Defendant White Cap is, and at all times relevant hereto, was a corporation qualified to do business in California, with its principal place of business located in the County of San Francisco, State of California.

-1-

PLAINTIFF'S COMPLAINT

LAW OFFICES OF MICHAEL HOFFMAN  
22 Battery Street, Ste. 1000  
San Francisco, CA 94111  
(415) 362-1111

LAW OFFICES OF MICHAEL HOFFMAN  
 22 Battery Street, Ste. 1000  
 San Francisco, CA 94111  
 (415) 362-1111

3. Plaintiff is informed and believes and thereby alleges that defendant HD Supply is a Delaware Corporation, and that Defendant HD Supply is, and at all times relevant hereto, was a corporation qualified to do business in California, with its principal place of business located in the city of Palm Beach Gardens, State of Florida. The employment contract upon which Plaintiff sues herein was made in the State of California to be performed in the County of San Francisco.

4. DOE Defendants 1 through 20 are sued herein under fictitious names pursuant to California Code of Civil Procedure Section 474. Plaintiff is informed and believes, and on that basis alleges that each defendant sued under such fictitious names is in some manner responsible for the wrongs and damages as alleged below, and in so acting was functioning as the agent, servant, partner, and employee of the co-defendants and in doing the things hereinafter mentioned was acting within the course and scope of his or her authority as such agent, servant, partner, and employee with the permission and consent of the co-defendants.

#### FIRST CAUSE OF ACTION

(Breach of Contract)

(Against Defendants White Cap, HD Supply, and all Does)

5. The allegations of paragraph 1 through 5 are alleged and incorporated herein by reference. This cause of action is pled against Defendant entities White Cap and HD Supply.

6. Plaintiff was last employed as an Assistant Traffic Supervisor.

7. During the entire course of Plaintiff's employment with Defendants, there existed an express and implied in fact employment contract between Plaintiff and Defendant which at the time of Plaintiff's discharge included, but was not limited to, the following terms and conditions:

A. Plaintiff would be able to continue his employment with Defendant indefinitely so long as he carried out his duties in a proper and competent manner;

LAW OFFICES OF MICHAEL HOFFMAN  
22 Battery Street, Ste. 1000  
San Francisco, CA 94111  
(415) 362-1111

1 B. Plaintiff would not be demoted, discharged or otherwise disciplined nor would  
2 Plaintiff's job functions be reassigned for other than good cause with notice thereof;

3 C. That Defendant would not evaluate Plaintiff's performance in an arbitrary, untrue  
4 or capricious manner;

5 8. This total employment contract was evidenced by various written documents, oral  
6 representations to Plaintiff by Defendants' agents and employees, and the parties' entire course of  
7 conduct including the following:

8 A. Plaintiff is informed and believes and thereon alleges that portions of this contract  
9 are embodied in defendants' written personnel policies and discipline procedures;

10 B. There was an established policy within Defendants' company known to Plaintiff  
11 and relied upon by Plaintiff, that an employee such as Plaintiff, who had performed services as a  
12 good and faithful employee, would have secure employment tenure with Defendants; that an  
13 employee such as Plaintiff would be permitted to continue employment unless discharged for  
14 good and sufficient cause; that an employee such as Plaintiff would not have his duties  
15 surreptitiously divided among junior, less experienced employees; that an employee such as  
16 Plaintiff would not be demoted, discharged or disciplined without good and sufficient cause, and  
17 would not otherwise have his job functions taken away or reassigned.

18 C. Again and again during his employment, Plaintiff was told by his superiors, orally  
19 and in writing, that he was doing an excellent job and that he would always have a job with  
20 Defendants. Plaintiff was given numerous awards and plaques consistently during Plaintiff's  
21 employment. As a result of the above representations, during the following 22 years of loyal  
22 employment, and promotions and salary increases, Plaintiff came reasonably to expect and to  
23 rely on the promise of job security. Such statements and acts by Defendants communicated to  
24  
25  
26  
27  
28

LAW OFFICES OF MICHAEL HOFFMAN  
22 Battery Street, Ste. 1000  
San Francisco, CA 94111  
(415) 362-1111

1 Plaintiff the idea that he had performed satisfactorily and that his job was secure. Plaintiff in  
2 good faith relied upon these representations and believed them to be true.

3 9. Plaintiff's reliance on and belief in and acceptance in good faith of all the  
4 assurances, promises and representations, as listed in paragraph 9 above, led Plaintiff throughout  
5 his employment with Defendants to reasonably believe that his employment was secure and that  
6 there thereby existed a contract of continuous employment with Defendants. As independent  
7 consideration for this contract of continuing employment, and as evidence of Plaintiff's reliance  
8 thereon, at the time he began working for defendant, Plaintiff gave up the possibility of other  
9 secure employment in order to accept employment with Defendant. As further independent  
10 consideration, in addition to performing his regular duties as an employee of Defendants,  
11 Plaintiff refrained from seeking any other employment and from time to time turned down, gave  
12 up, and refrained from pursuing other career opportunities.

13 10. Plaintiff undertook and continued employment and duly performed all the  
14 conditions of the contract to be performed by him. Plaintiff has at all times been ready, willing  
15 and able to perform and has offered to perform all the conditions of this contract to be performed  
16 by him.

17 11. Despite the representations made to Plaintiff and the reliance he placed on them,  
18 Defendants failed to carry out their responsibilities under the terms of the employment contract  
19 in the following way:

20 A. In the Summer of 2006, Plaintiff was subjected to arbitrary, unfair and dishonest  
21 business practices in the form of concealing the fact that Defendants were surreptitiously  
22 dividing up Plaintiff's work duty among junior, less experienced employees;  
23  
24  
25  
26  
27  
28

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1 B. During termination, by telling Plaintiff that his job performance was "excellent"  
2 and he was being terminated because of the alleged elimination of his position.

3 C. By wrongfully terminating Plaintiff on or about December 10, 2007, in spite of  
4 exemplary job performance;

5 12. Defendants breached the aforementioned total employment contract by the  
6 arbitrary or discriminatory discharge of Plaintiff without regard to or in compliance with the  
7 requirements of the aforesaid agreement.  
8

9 13. As a proximate result of Defendants' breach of the total employment contract,  
10 Plaintiff has suffered and continues to suffer substantial losses in earnings, bonuses, deferred  
11 compensation and other employment benefits which he would have received had Defendants not  
12 breached said agreement, all to his damage in an amount according to proof.  
13

14 14. The aforesaid employment contract contained an implied covenant of good faith  
15 and fair dealing by which Defendants promised to give full cooperation to Plaintiff and his  
16 performance under said employment contract and to refrain from doing any act which would  
17 prevent or impede Plaintiff from performing all the conditions of the contract to be performed by  
18 him or any act that would prevent or impede Plaintiff's enjoyment of the fruits of said contract.  
19 Specifically, said covenant of good faith and fair dealing required Defendants to fairly, honestly  
20 and reasonably perform the terms and conditions of the agreement.  
21

22 15. Plaintiff, an individual employee, with no legal representation or prior experience  
23 in making such contracts as the one alleged herein, was in an inherently unequal bargaining  
24 position in his dealings with Defendants, an established concern with billions of dollars in assets.  
25 In addition, once Plaintiff committed himself to the above-stated contract, and took the  
26 reasonable actions alleged herein in reliance, Plaintiff was placed in a particularly vulnerable  
27  
28

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1 position because few openings exist in his field for persons of his age, experience and  
2 qualifications. He had entrusted his entire livelihood to Defendants' willingness to perform its  
3 obligations under the contract, and risked suffering grave harm if Defendants failed to perform.  
4 Defendant was aware of Plaintiff's vulnerability in this regard.

5  
6 16. As a result of Defendants' violations of contract, and their reprehensible and  
7 willful conduct toward Plaintiff, Plaintiff has suffered harm:

8 A. The destruction of Plaintiff's valuable property interests, i.e., his prospect of  
9 continuing further employment with Defendants and receipt of continued compensation;

10 B. Impairment and damage to Plaintiff's good name by causing him to be discharged  
11 with the untrue implication to all future prospective employers that he had been disciplined or  
12 discharged for incompetence or unsatisfactory performance. Said implication was and is  
13 completely untrue and totally without foundation;

14 C. Substantial losses in earnings, bonuses, deferred compensation, and other  
15 employment benefits and costs incurred.

16  
17 17. The primary motivation of Plaintiff in obtaining secure employment with White  
18 Cap was because he believed he could grow and develop his career as a White Cap employee, as  
19 well as Plaintiff's admiration of White Cap and excitement over employment with said company.

20  
21 18. Defendants committed the acts alleged herein maliciously, fraudulently and  
22 oppressively, with the wrongful intention of injuring Plaintiff, from an improper and evil motive  
23 amounting to malice, and in conscious disregard of Plaintiff's rights. Plaintiff thus is entitled to  
24 recover punitive damages from Defendants in an amount according to proof.

25  
26 WHEREFORE, Plaintiff requests relief as hereinafter provided.  
27  
28

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**SECOND CAUSE OF ACTION**

(Age Discrimination, Cal Govt. Code § 12940, et seq.) (Against Defendants White Cap)

19. Plaintiff incorporates by reference the allegations of paragraphs 1 through 18 above as through set forth verbatim here.

20. At the time of termination, Plaintiff was 66 years of age.

21. On December 10, 2007 Plaintiff was terminated by Defendant from his position. Plaintiff had been Defendant's loyal employee for approximately 22 years prior to his termination.

22. Plaintiff's discharge was based on his age.

A. Plaintiff was terminated for pretextual reasons;

B. Before terminating Plaintiff, Defendants purposely concealed the fact that Defendants were surreptitiously dividing up Plaintiff's job among younger, less experienced junior employees;

C. During termination, Plaintiff was told that his job performance was "excellent" and he was being terminated because his position was being eliminated. This was untrue.

D. Plaintiff is informed and believes and thereon alleges that Defendants have hired younger employees to take Plaintiff's position after Plaintiff was told that the termination was due to elimination of Plaintiff's position;

E. Disparate treatment was given to Plaintiff due to Plaintiff's age;

F. There was a contract between the parties hereto, known and relied upon by Plaintiff, that an employee such as Plaintiff, who had performed services as a good and faithful employee, particularly for a period of 22 years, would have secure employment tenure with Defendants; would be permitted to continue employment unless discharged for good and sufficient cause; that an employee such as Plaintiff, would not be discharged, have his hours cut



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1 or have his duties surreptitiously or otherwise divided up among younger, junior employees,  
 2 without good and sufficient cause; and would not otherwise have his job functions taken away or  
 3 reassigned, that Defendants would not negligently or intentionally create an environment of  
 4 disparate treatment.

5 23. Plaintiff filed a timely charge of age discrimination with the California DFEH,  
 6 effectively tolling the statute of limitations on Plaintiff's claim herein. Plaintiff is not required to  
 7 exhaust any other administrative remedies before filing this suit.  
 8

9 24. As a proximate and direct result of Defendants' discrimination against Plaintiff,  
 10 Plaintiff has suffered and continues to suffer substantial losses incurred in seeking and  
 11 performing substitute employment, and in earnings, bonuses, deferred compensation and other  
 12 employment benefits, and has suffered and continues to suffer embarrassment, humiliation,  
 13 mental anguish and emotional and physical distress all to his damage in an amount according to  
 14 proof.  
 15

16 25. Defendants committed the acts alleged herein maliciously, fraudulently and  
 17 oppressively, with the wrongful intention of injuring Plaintiff, from an improper and evil motive  
 18 amounting to malice, and conscious disregard of Plaintiff's rights. Plaintiff is thus entitled to  
 19 recover punitive damages from Defendants in an amount according to proof, and is further  
 20 entitled to liquidated damages in an equal amount to his unpaid wages.  
 21  
 22

23 **THIRD CAUSE OF ACTION**  
 24 (Wrongful Termination in Violation of Public Policy)

25 1. Under California law, no employee, whether they are an at will employee, or an  
 26 employee under a written or other employment contract, can be terminated for a reason that is in  
 27 violation of a fundamental public policy. In recent years, the California court has interpreted a  
 28 fundamental public policy to be any articulable constitutional or statutory provision that is

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1 concerned with a matter affecting society at large rather than a purely personal or proprietary  
 2 interest of the employee or the employer, and which is fundamental, substantial, and well  
 3 established at the time of discharge.

4 2. Plaintiff is informed, believes, and based thereon alleges, that Defendant White Cap  
 5 and HD Supply Co. terminated Plaintiff's employment in violation of public policy, on the basis  
 6 of Plaintiff's age. The conduct described in the above sentence violates the following statutes  
 7 that effect society at large:

8 a. California Government Code  
 9 b. All other state and federal statutes, regulations, administrative orders, and ordinances  
 10 which effect society at large, and which discovery will reveal were violated by said Defendant by  
 11 discriminating and retaliating against the Plaintiff.

12 3. Plaintiff alleges that Defendants violated articulable public policies, affecting society  
 13 at large, by violating the statutes and the California Constitution, as described above, when said  
 14 Defendant constructively terminated Plaintiff's employment in violation of public policy.

15 4. As a direct, foreseeable, and proximate result of the actions of Defendants as  
 16 described above, Plaintiff has suffered, and continues to suffer, severe emotional distress,  
 17 substantial losses in salary, bonuses, job benefits, and other employment benefits they would  
 18 have received from said Defendants, all to the Plaintiff's damage, in a sum within the jurisdiction  
 19 of this court, to be ascertained according to proof.

20 **PRAYER FOR RELIEF**

21 1. For damages for breach of contract according to proof including losses incurred in  
 22 seeking substitute employment and loss of earnings, deferred compensation and other  
 23 employment benefits;  
 24

25 2. For compensatory damages for losses resulting from humiliation, mental anguish,  
 26 and emotional distress according to proof;  
 27  
 28

3. For interest on the amount of losses incurred in earnings, deferred compensation and other employee benefits at the prevailing legal rate;
4. For punitive damages according to proof;
5. For costs of suit including reasonable attorneys' fees pursuant to statute;

MICHAEL HOFFMAN, ESQ.

Dated:

By:

Michael HOFFMAN,  
ATTORNEY FOR PLAINTIFF

LAW OFFICES OF MICHAEL HOFFMAN  
22 Battery Street, Ste. 1000  
San Francisco, CA 94111  
(415) 362-1111

CASE NUMBER: CGC-08-477141 ALEX ROJAS VS. WHITE CAP CONSTRUCTION SUPPLY, INC

**NOTICE TO PLAINTIFF**

A Case Management Conference is set for:

**DATE:** DEC-05-2008

**TIME:** 9:00AM

**PLACE:** Department 212  
400 McAllister Street  
San Francisco, CA 94102-3680

All parties must appear and comply with Local Rule 3.

CRC 3 725 requires the filing and service of a case management statement form CM-110 no later than 15 days before the case management conference.

However, it would facilitate the issuance of a case management order **without an appearance** at the case management conference if the case management statement is filed, served and lodged in Department 212 twenty-five (25) days before the case management conference.

Plaintiff must serve a copy of this notice upon each party to this action with the summons and complaint. Proof of service subsequently filed with this court shall so state.

**ALTERNATIVE DISPUTE RESOLUTION POLICY REQUIREMENTS**

IT IS THE POLICY OF THE SUPERIOR COURT THAT EVERY CIVIL CASE PARTICIPATE IN EITHER MEDIATION, JUDICIAL OR NON-JUDICIAL ARBITRATION, THE EARLY SETTLEMENT PROGRAM OR SOME SUITABLE FORM OF ALTERNATIVE DISPUTE RESOLUTION PRIOR TO A MANDATORY SETTLEMENT CONFERENCE OR TRIAL. (SEE LOCAL RULE 4)

Plaintiff must serve a copy of the Alternative Dispute Resolution Information Package on each defendant along with the complaint. All counsel must discuss ADR with clients and opposing counsel and provide clients with a copy of the Alternative Dispute Resolution Information Package prior to filing the Case Management Statement.

**[DEFENDANTS: Attending the Case Management Conference does not take the place of filing a written response to the complaint. You must file a written response with the court within the time limit required by law. See Summons.]**

Superior Court Alternative Dispute Resolution Coordinator  
400 McAllister Street, Room 103  
San Francisco, CA 94102  
(415) 551-3876

See Local Rules 3.6, 6.0 C and 10 D re stipulation to commissioners acting as temporary judges

**Exhibit B**

1 ROBERT A. DOLINKO (State Bar No. 076256)  
radolinko@thelen.com  
2 DEBORAH R. SCHWARTZ (State Bar No. 208934)  
drschwartz@thelen.com  
3 THELEN REID BROWN RAYSMAN & STEINER LLP  
101 Second Street, Suite 1800  
4 San Francisco, California 94105-3601  
Telephone: (415) 371-1200  
5 Facsimile: (415) 371-1211

6 Attorneys for Defendants  
7 WHITE CAP CONSTRUCTION SUPPLY, INC.  
and HD SUPPLY INC.  
8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF SAN FRANCISCO  
11

12 ALEX ROJAS,

13 Plaintiff,

14 vs.

15 WHITE CAP CONSTRUCTION SUPPLY,  
16 INC. and HD SUPPLY INC., and DOES 1-  
50, inclusive,

17 Defendants.  
18

Case No.: CGC-08-477141

**ANSWER OF DEFENDANTS WHITE  
CAP CONSTRUCTION SUPPLY, INC.  
AND HD SUPPLY INC. TO PLAINTIFF'S  
COMPLAINT FOR DAMAGES**

19 Defendants White Cap Construction Supply, Inc. and HD Supply Inc. (jointly  
20 "Defendants"), in answer to the Complaint ("Complaint") of plaintiff Alex Rojas ("Plaintiff"),  
21 admit, deny and allege as follows:

22 1. Pursuant to the provisions of Section 431.30(d) of the California Code of Civil  
23 Procedure, Defendants deny generally and specifically each and every allegation contained in  
24 Plaintiff's Complaint, and further deny that Plaintiff has sustained damages in the sum or sums  
25 alleged, or in any other sum at all, by reason of any act, breach or omission by Defendants.

26 ///

27 ///

28 ///

**AFFIRMATIVE DEFENSES**

As separate affirmative defenses to each and every cause of action alleged in the Complaint, unless specifically stated otherwise, Defendants allege as follows:

**FIRST AFFIRMATIVE DEFENSE**

2. Plaintiff's Complaint, and each and every cause of action alleged therein, fails to state facts sufficient to constitute a cause of action against Defendants.

**SECOND AFFIRMATIVE DEFENSE**

3. Defendants allege, based on information and belief, that the court lacks jurisdiction over the subject matter of each of Plaintiff's claims for relief because the exclusive remedy for his purported emotional and physical injuries lies under the California Workers' Compensation Act, Cal. Lab. Code § 3600, *et seq.*

**THIRD AFFIRMATIVE DEFENSE**

4. Defendants allege, based on information and belief, that Plaintiff's Complaint falls outside the jurisdiction of this court in that Plaintiff has failed to satisfy the jurisdictional prerequisites to bringing this lawsuit by exhausting his available administrative remedies as required by law.

**FOURTH AFFIRMATIVE DEFENSE**

5. The Court lacks subject matter jurisdiction over the claims and allegations in the Complaint that concern matters not reasonably related to charges filed by Plaintiff in a timely manner with the appropriate government agency.

**FIFTH AFFIRMATIVE DEFENSE**

6. Although Defendants deny that they engaged in the conduct attributed to them, Defendants allege, based on information and belief, that Plaintiff's damage claims are barred, in whole or part, by the avoidable consequences doctrine.

**SIXTH AFFIRMATIVE DEFENSE**

7. Defendants allege, based on information and belief, that Plaintiff's Complaint, and each and every cause of action alleged therein, is barred by the doctrine of waiver.



**SEVENTH AFFIRMATIVE DEFENSE**

8. Defendants allege, based on information and belief, that Plaintiff's Complaint, and each and every cause of action alleged therein, is barred by the doctrine of estoppel.

**EIGHTH AFFIRMATIVE DEFENSE**

9. Defendants allege, based on information and belief, that Plaintiff's Complaint, and each and every cause of action alleged therein, is barred by the doctrine of unclean hands.

**NINTH AFFIRMATIVE DEFENSE**

10. Although Defendants deny that Plaintiff has been damaged in any way, if it should be determined that Plaintiff has been damaged, then Defendants allege, based on information and belief, that Plaintiff has failed to mitigate his purported damages, and further alleges that, to the extent any damages could have been mitigated, such sums should be deducted from any award of damages.

**TENTH AFFIRMATIVE DEFENSE**

11. Defendants allege, based on information and belief, that to the extent Plaintiff seeks unspecified punitive damages, such claim and damages are contrary to the due process clauses and other clauses of the United States and California Constitutions.

WHEREFORE, White Cap Construction Supply, Inc. and HD Supply Inc. pray for judgment against Plaintiff as follows:

1. That Plaintiff's Complaint be dismissed in its entirety and with prejudice, and that Plaintiff take nothing by reason hereof;

2. That White Cap Construction Supply, Inc. and HD Supply Inc. each be awarded its costs of suit incurred herein;

3. That White Cap Construction Supply, Inc. and HD Supply Inc. each be awarded its attorneys' fees to the extent provided by law;

4. That judgment be entered in favor of White Cap Construction Supply, Inc. and HD Supply Inc.; and

///

///

1           5.       That White Cap Construction Supply, Inc. and HD Supply Inc. receive such other  
2 relief as the Court deems just and proper.

3  
4 Dated: August 13, 2008

THELEN REID BROWN RAYSMAN & STEINER LLP

5  
6 By 

Robert A. Dolinko

Deborah R. Schwartz

Attorneys for Defendants

WHITE CAP CONSTRUCTION SUPPLY, INC.  
and HD SUPPLY INC.

1 *Rojas v. White Cap Construction and HD Supply, et al.*  
2 *Case No. CGC-08-477141*

3 **PROOF OF SERVICE BY MAIL**

4 I am over the age of 18 and not a party to the within action. I am employed in the County  
5 of San Francisco, State of California by Thelen Reid Brown Raysman & Steiner LLP. My  
6 business address is 101 Second Street, Suite 1800, San Francisco, California 94105.

7 On August 13, 2008, I served the following entitled document:

8 **ANSWER OF DEFENDANTS WHITE CAP CONSTRUCTION SUPPLY, INC.  
9 AND HD SUPPLY INC. TO PLAINTIFF'S COMPLAINT FOR DAMAGES**

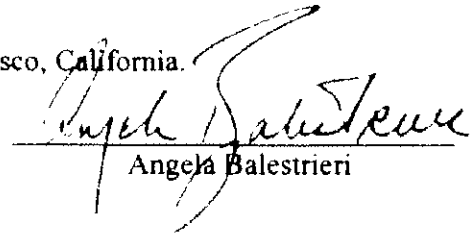
10 by placing a true and correct copy thereof in sealed envelopes addressed as follows:

11  
12 Michael Hoffmann, Esq  
13 Hoffmann Employment Lawyers, LLP  
14 100 Pine Street, Suite 1550  
San Francisco, CA 94111

15 I am readily familiar with the firm's business practice for collection and processing of  
16 correspondence for mailing with the United States Postal Service. On this day, I placed for  
17 collection and processing the above documents to be deposited with the United States Postal  
18 Service in the ordinary course of business. And in the ordinary course of the firm's business, such  
19 correspondence is deposited with the United States Postal Service the same day that it is collected.

20 I declare under penalty of perjury under the laws of the State of California that the  
21 foregoing is true and correct.

22 Executed on August 13, 2008, at San Francisco, California.

23   
24 Angela Balestrieri  
25  
26  
27  
28